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E-FILED: July 1, 2009

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

<b>In Re:</b>	)	<b>Case No. BKS-08-25526-MKN</b>
	)	<b>Chapter 13</b>
	)	
	)	<b>Hearing Date: OST REQUESTED</b>
<b>Jesse K. Chmielewski and Stephanie</b>	)	<b>Hearing Time: OST REQUESTED</b>
<b>R. Chmielewski ,</b>	)	
	)	
	)	
<b>Debtor(s).</b>	)	
_____	)	

**MOTION TO VACATE ORDER VACATING THE AUTOMATIC STAY AS TO  
DEUTSCHE BANK AND NATIONAL**

COMES NOW the Debtors, **Jesse K. Chmielewski and Stephanie R. Chmielewski**, by and through David Krieger, Esq., of the law firm of HAINES & KRIEGER, LLC, and move the Court pursuant to Rule 9024 of the Bankruptcy Rules and Rule 60 of the Federal Rules of Civil Procedure for an order to VACATE THE ORDER VACATING THE AUTOMATIC STAY AS TO DEUTSCHE BANK AND NATIONAL entered by the Court in the above matter.

DATED July 1, 2009

HAINES & KRIEGER, LLC  
By: /s/David Krieger, Esq.  
David Krieger, Esq.

**POINTS AND AUTHORITIES**

**THE COURT MAY RELIEVE A PARTY FROM AN  
ORDER DUE TO MISTAKE, INADVERTENCE,  
SURPRISE OR EXCUSABLE NEGLIGENCE.**

Pursuant to Bankruptcy Rule 9024, FRCP 60(b) applies where a party requests relief from judgment or order entered by the Bankruptcy Court.

FRCP 60(b) states that "[o]n motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect..." Under Section 11 U.S.C. §350(b) of the Bankruptcy Code a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

**STATEMENT OF FACTS**

1. Debtors filed the instant Chapter 13, Case Number 08-25526, on December 29, 2008.
2. On or about May 12, 2009, DEUTSCHE BANK AND NATIONAL filed a motion to vacate the automatic stay.
3. On June 10, 2009, a hearing was held on DEUTSCHE BANK AND NATIONAL's Motion for relief from the automatic stay and same motion was granted by the Court.
4. The pre-petition arrears and the post-petition January 2009 payment to DEUTSCHE BANK AND NATIONAL are included in the Amended Chapter

13 Plan Number 2. (*See Amended BK Plan Number 2 attached hereto as Exhibit "1"*).

5. Debtors have provided proof of post-petition payments from February 2009 through June 2009. (*See Proof of Mortgage Payments attached hereto as Exhibit "2"*).
6. Debtors advised counsel that Debtors can immediately tender the July 2009 mortgage payment to DEUTSCHE BANK AND NATIONAL if the Court reimposes the stay as requested herein.

WHEREFORE, the Debtors now request that Your Honor:

1. Vacate the Order Vacating the Automatic Stay as to DEUTSCHE BANK AND NATIONAL;
2. Reinstate the automatic as to DEUTSCHE BANK AND NATIONAL;
3. Compel DEUTSCHE BANK AND NATIONAL to accept future payments from the Debtors;
4. Compel DEUTSCHE BANK AND NATIONAL to provide an accounting of how all post-petition payments made by the Debtors have been applied since the instant Chapter 13 filing;
5. Compel DEUTSCHE BANK AND NATIONAL to provide a reinstate amount, if any, to the Debtors within 10 days;
6. Grant such other relief as Your Honor finds appropriate.

Dated: July 1, 2009

/s/David Krieger, Esq.  
David Krieger, Esq.  
Attorney for Debtor(s)